

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

TARA FARRELL, et al., §  
§  
Plaintiffs, §  
§  
v. § C.A. No. 3:22-cv-00728-M  
§  
NEW MILLENNIUM CONCEPTS, LTD., §  
§  
Defendant. §

**DEFENDANT'S ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT**

Defendant New Millennium Concepts, Ltd. (“NMCL”) hereby answers Plaintiffs’ Class Action Complaint (“Complaint”).

**I. ANSWER**

1. The allegations directed at NMCL in Paragraph 1 of the Complaint are denied. To the extent the allegations in Paragraph 1 are not directed at NMCL and/or contain conclusions of law, no response is required.

2. The allegations directed at NMCL in Paragraph 2 of the Complaint are denied. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on product descriptions or images, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents. To the extent the allegations in Paragraph 2 are not directed at NMCL and/or contain conclusions of law, no response is required.

3. NMCL denies the allegations in Paragraph 3 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on statements, instructions, product descriptions or related materials, such documents speak for themselves, all objections are hereby

reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

4. The allegations in Paragraph 4 are denied. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on statements, instructions, product descriptions or related materials, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents. Furthermore, to the extent the allegations in Paragraph 4 contain conclusions of law, no response is required.

5. The allegations directed at NMCL in Paragraph 5 of the Complaint are denied. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

6. The allegations contained in Paragraph 6 of the Complaint contain conclusions of law to which no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents. NMCL does not contest personal jurisdiction.

7. The allegations contained in Paragraph 7 of the Complaint contain conclusions of law to which no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents. NMCL does not contest venue.

8. NMCL is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 8 of the Complaint.

9. NMCL is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.

10. NMCL is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. NMCL is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. NMCL denies the allegations in Paragraph 12 of the Complaint.

13. NMCL denies the allegations in Paragraph 13 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on statements, instructions, product descriptions or related materials, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

14. NMCL denies the allegations in Paragraph 14 of the Complaint to the extent they are directed at NMCL. To the extent the allegations in Paragraph 14 are not directed at NMCL and/or contain conclusions of law, no response is required.

a. The allegations directed at NMCL in Paragraph 14.a. of the Complaint are denied. To the extent the allegations in Paragraph 14.a. are not directed at NMCL and/or contain conclusions of law, no response is required.

1) The allegations directed at NMCL in Paragraph 14.a.1. of the Complaint are denied. To the extent the allegations in Paragraph 14.a.1. are not directed at NMCL and/or contain conclusions of law, no response is required.

2) NMCL denies the allegations in Paragraph 14.a.2. of the Complaint.

- 3) NMCL denies the allegations in Paragraph 14.a.3. of the Complaint.
- 4) NMCL denies the allegations in Paragraph 14.a.4. of the Complaint.

To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

- 5) NMCL denies the allegations in Paragraph 14.a.5. of the Complaint.
  - a) NMCL denies the allegations in Paragraph 14.a.5.a. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.
  - b) NMCL denies the allegations in Paragraph 14.a.5.b. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.
  - c) NMCL denies the allegations in Paragraph 14.a.5.c. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.
  - d) NMCL denies the allegations in Paragraph 14.a.5.d. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain

websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

e) NMCL denies the allegations in Paragraph 14.a.5.e. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

f) NMCL denies the allegations in Paragraph 14.a.5.f. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

g) NMCL denies the allegations in Paragraph 14.a.5.g. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

h) NMCL denies the allegations in Paragraph 14.a.5.h. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

i) NMCL denies the allegations in Paragraph 14.a.5.i. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites and/or videos, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

6) NMCL denies the allegations in Paragraph 14.a.6. of the Complaint.

b. The allegations directed at NMCL in Paragraph 14.b. of the Complaint are denied. To the extent the allegations in Paragraph 14.b. are not directed at NMCL and/or contain conclusions of law, no response is required. NMCL does not contest this Court's personal jurisdiction.

1) NMCL denies the allegations in Paragraph 14.b.1. of the Complaint.

2) NMCL denies the allegations in Paragraph 14.b.2. of the Complaint.

3) NMCL denies the allegations in Paragraph 14.b.3. of the Complaint.

4) NMCL denies the allegations in Paragraph 14.b.4. of the Complaint.

5) NMCL denies the allegations in Paragraph 14.b.5. of the Complaint.

6) The allegations directed at NMCL in Paragraph 14.b.6. of the Complaint are denied. To the extent the allegations in Paragraph 14.b.6. are not directed at NMCL and/or contain conclusions of law, no response is required.

15. The allegations directed at NMCL in Paragraph 15 of the Complaint are denied. To the extent the allegations in Paragraph 15 are not directed at NMCL and/or contain conclusions of law, no response is required.

16. NMCL is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint. To the extent the allegations in Paragraph

16 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on United Nations Reports and a statute, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

17. The allegations directed at NMCL in Paragraph 17 of the Complaint are denied. To the extent the allegations in Paragraph 17 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on reports and/or certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

18. NMCL denies the allegations in Paragraph 18 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on statements, instructions, product descriptions or related materials, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

19. The allegations directed at NMCL in Paragraph 19 of the Complaint are denied. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on statements, instructions, product descriptions or related materials, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents. To the extent the allegations in Paragraph 19 are not directed at NMCL and/or contain conclusions of law, no response is required.

20. NMCL denies the allegations in Paragraph 20 of the Complaint. To the extent that

Plaintiffs purport to quote from, paraphrase, or rely on an image, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

21. NMCL denies the allegations in Paragraph 21 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

22. The allegations directed at NMCL in Paragraph 22 of the Complaint are denied. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on statements, instructions, product descriptions or related materials, and/or an image, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents. To the extent the allegations in Paragraph 22 are not directed at NMCL and/or contain conclusions of law, no response is required.

23. NMCL denies the allegations in Paragraph 23 of the Compliant. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on an image, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

24. NMCL denies the allegations in Paragraph 24 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

25. NMCL denies the allegations in Paragraph 25 of the Complaint. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations in Section V (Factual

Allegations) and Subsection B (The Challenged Representations) of the Complaint. To the extent the allegations in Paragraph 25 are not directed at NMCL and/or contain conclusions of law, no response is required.

26. NMCL denies the allegations in Paragraph 26 of the Complaint.

a. NMCL denies the allegations in Paragraph 26.a. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

b. NMCL denies the allegations in Paragraph 26.b. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

27. NMCL denies the allegations in Paragraph 27 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

a. NMCL denies the allegations in Paragraph 27.a. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

b. NMCL denies the allegations in Paragraph 27.b. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL

refers to those documents for a complete and accurate recitation of their contents.

28. NMCL denies the allegations in Paragraph 28 of the Complaint.

a. NMCL denies the allegations in Paragraph 28.a. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

b. NMCL denies the allegations in Paragraph 28.b. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

c. NMCL denies the allegations in Paragraph 28.c. of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

29. The allegations directed at NMCL in Paragraph 29 of the Complaint are denied. To the extent the allegations in Paragraph 29 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on NSF/ANSI Standards, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

a. The allegations directed at NMCL in Paragraph 29.a. of the Complaint are denied. To the extent the allegations in Paragraph 29.a. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from,

paraphrase, or rely on NSF/ANSI Standards, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

b. The allegations directed at NMCL in Paragraph 29.b. of the Complaint are denied. To the extent the allegations in Paragraph 29.b. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on NSF/ANSI Standards, statutes, and/or regulations, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

c. The allegations directed at NMCL in Paragraph 29.c. of the Complaint are denied. To the extent the allegations in Paragraph 29.c. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on NSF/ANSI Standards, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

30. NMCL denies the allegations in Paragraph 30 of the Complaint. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain websites, NSF/ANSI Standards, and/or statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

31. The allegations directed at NMCL in Paragraph 31 of the Complaint are denied. To the extent the allegations in Paragraph 31 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely

on certain websites and/or lab results, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

a. The allegations directed at NMCL in Paragraph 31.a. of the Complaint are denied. To the extent the allegations in Paragraph 31.a. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or refer to statements, instructions, product descriptions or related materials, and/or lab results, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

b. The allegations directed at NMCL in Paragraph 31.b. of the Complaint are denied. To the extent the allegations in Paragraph 31.b. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or refer to statements, instructions, product descriptions or related materials, and/or lab results, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

c. The allegations directed at NMCL in Paragraph 31.c. of the Complaint are denied. To the extent the allegations in Paragraph 31.c. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or refer to statements, instructions, product descriptions or related materials, and/or lab results, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation

of their contents.

d. The allegations directed at NMCL in Paragraph 31.d. of the Complaint are denied. To the extent the allegations in Paragraph 31.d. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or refer to statements, instructions, product descriptions or related materials, and/or lab results, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

e. The allegations directed at NMCL in Paragraph 31.e. of the Complaint are denied. To the extent the allegations in Paragraph 31.e. are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or refer to statements, instructions, product descriptions or related materials, and/or lab results, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

32. The allegations directed at NMCL in Paragraph 32 of the Complaint are denied. To the extent the allegations in Paragraph 32 are not directed at NMCL and/or contain conclusions of law, no response is required.

33. The allegations directed at NMCL in Paragraph 33 of the Complaint are denied. To the extent the allegations in Paragraph 33 are not directed at NMCL and/or contain conclusions of law, no response is required.

34. NMCL denies the allegations in Paragraph 34 of the Complaint.

35. The allegations directed at NMCL in Paragraph 35 of the Complaint are denied. To

the extent the allegations in Paragraph 35 are not directed at NMCL and/or contain conclusions of law, no response is required.

36. The allegations directed at NMCL in Paragraph 36 of the Complaint are denied. To the extent the allegations in Paragraph 36 are not directed at NMCL and/or contain conclusions of law, no response is required.

37. The allegations directed at NMCL in Paragraph 37 of the Complaint are denied. To the extent the allegations in Paragraph 37 are not directed at NMCL and/or contain conclusions of law, no response is required.

38. The allegations directed at NMCL in Paragraph 38 of the Complaint are denied. To the extent the allegations in Paragraph 38 are not directed at NMCL and/or contain conclusions of law, no response is required.

39. The allegations directed at NMCL in Paragraph 39 of the Complaint are denied. To the extent the allegations in Paragraph 39 are not directed at NMCL and/or contain conclusions of law, no response is required.

40. The allegations directed at NMCL in Paragraph 40 of the Complaint are denied. To the extent the allegations in Paragraph 40 are not directed at NMCL and/or contain conclusions of law, no response is required.

41. The allegations directed at NMCL in Paragraph 41 of the Complaint are denied. To the extent the allegations in Paragraph 41 are not directed at NMCL and/or contain conclusions of law, no response is required.

- a. NMCL denies the allegations in Paragraph 41.a. of the Complaint.
- b. NMCL denies the allegations in Paragraph 41.b. of the Complaint.
- c. NMCL denies the allegations in Paragraph 41.c. of the Complaint.

d. NMCL denies the allegations in Paragraph 41.d. of the Complaint.

e. NMCL denies the allegations in Paragraph 41.e. of the Complaint.

f. NMCL denies the allegations in Paragraph 41.f. of the Complaint.

g. The allegations directed at NMCL in Paragraph 41.g. of the Complaint are denied. To the extent the allegations contained in Paragraph 41.g. are not directed at NMCL and/or contain conclusions of law, no response is required.

h. The allegations directed at NMCL in Paragraph 41.h. of the Complaint are denied. To the extent the allegations contained in Paragraph 41.h. are not directed at NMCL and/or contain conclusions of law, no response is required.

i. The allegations directed at NMCL in Paragraph 41.i. of the Complaint are denied. To the extent the allegations contained in Paragraph 41.i. are not directed at NMCL and/or contain conclusions of law, no response is required.

42. The allegations directed at NMCL in Paragraph 42 of the Complaint are denied. To the extent the allegations contained in Paragraph 42 are not directed at NMCL and/or contain conclusions of law, no response is required.

a. The allegations directed at NMCL in Paragraph 42.a. of the Complaint are denied. To the extent the allegations contained in Paragraph 42.a. are not directed at NMCL and/or contain conclusions of law, no response is required.

b. The allegations directed at NMCL in Paragraph 42.b. of the Complaint are denied. To the extent the allegations contained in Paragraph 42.b. are not directed at NMCL and/or contain conclusions of law, no response is required.

c. The allegations directed at NMCL in Paragraph 42.c. of the Complaint are denied. To the extent the allegations contained in Paragraph 42.c. are not directed at NMCL and/or

contain conclusions of law, no response is required.

d. The allegations directed at NMCL in Paragraph 42.d. of the Complaint are denied. To the extent the allegations contained in Paragraph 42.d. are not directed at NMCL and/or contain conclusions of law, no response is required.

e. The allegations directed at NMCL in Paragraph 42.e. of the Complaint are denied. To the extent the allegations contained in Paragraph 42.e. are not directed at NMCL and/or contain conclusions of law, no response is required.

f. The allegations directed at NMCL in Paragraph 42.f. of the Complaint are denied. To the extent the allegations contained in Paragraph 42.f. are not directed at NMCL and/or contain conclusions of law, no response is required.

43. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 43 of the Complaint. To the extent the allegations in Paragraph 43 are not directed at NMCL and/or contain conclusions of law, no response is required.

44. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 44 of the Complaint. To the extent the allegations in Paragraph 44 are not directed at NMCL and/or contain conclusions of law, no response is required.

45. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 45 of the Complaint. To the extent the allegations in Paragraph 45 are not directed at NMCL and/or contain conclusions of law, no response is required.

46. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 46 of the Complaint. To the extent the allegations in Paragraph 46 are not directed at NMCL and/or contain conclusions of law, no response is required.

47. NMCL denies that this case can be properly certified as a class action and all other

allegations contained in Paragraph 47 of the Complaint. To the extent the allegations in Paragraph 47 are not directed at NMCL and/or contain conclusions of law, no response is required.

48. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 48 of the Complaint. To the extent the allegations in Paragraph 48 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

49. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 49 of the Complaint. To the extent the allegations in Paragraph 49 are not directed at NMCL and/or contain conclusions of law, no response is required.

50. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 50 of the Complaint. To the extent the allegations in Paragraph 50 are not directed at NMCL and/or contain conclusions of law, no response is required.

51. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 51 of the Complaint. To the extent the allegations in Paragraph 51 are not directed at NMCL and/or contain conclusions of law, no response is required.

52. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 52 of the Complaint. To the extent the allegations in Paragraph 52 are not directed at NMCL and/or contain conclusions of law, no response is required.

53. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 53 of the Complaint. To the extent the allegations in Paragraph 53 are not directed at NMCL and/or contain conclusions of law, no response is required.

54. NMCL denies that this case can be properly certified as a class action and all other allegations contained in Paragraph 54 of the Complaint. To the extent the allegations in Paragraph 54 are not directed at NMCL and/or contain conclusions of law, no response is required.

55. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations.

56. The allegations directed at NMCL in Paragraph 56 of the Complaint are denied. To the extent the allegations in Paragraph 56 are not directed at NMCL and/or contain conclusions of law, no response is required.

57. The allegations directed at NMCL in Paragraph 57 of the Complaint are denied. To the extent the allegations in Paragraph 57 are not directed at NMCL and/or contain conclusions of law, no response is required.

58. The allegations directed at NMCL in Paragraph 58 of the Complaint are denied. To the extent the allegations in Paragraph 58 are not directed at NMCL and/or contain conclusions of law, no response is required.

59. The allegations directed at NMCL in Paragraph 59 of the Complaint are denied. To the extent the allegations in Paragraph 59 are not directed at NMCL and/or contain conclusions of law, no response is required.

62. NMCL denies the allegations in Paragraph 62 of the Complaint.<sup>1</sup> Plaintiffs fail to plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 62 are not directed at NMCL and/or contain conclusions of law to which no response is required.

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<sup>1</sup> The Complaint skips from Paragraph 59 to 62. NMCL has numbered its Answer to correspond to the numbering in the Complaint.

60. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations.<sup>2</sup>

61. The allegations directed at NMCL in Paragraph 61 of the Complaint are denied. To the extent the allegations in Paragraph 61 are not directed at NMCL and/or contain conclusions of law, no response is required.

62. The allegations directed at NMCL in Paragraph 62 of the Complaint are denied. To the extent the allegations in Paragraph 62 are not directed at NMCL and/or contain conclusions of law, no response is required.

63. The allegations directed at NMCL in Paragraph 63 of the Complaint are denied. To the extent the allegations in Paragraph 63 are not directed at NMCL and/or contain conclusions of law, no response is required.

64. The allegations directed at NMCL in Paragraph 64 of the Complaint are denied. To the extent the allegations in Paragraph 64 are not directed at NMCL and/or contain conclusions of law, no response is required.

65. The allegations directed at NMCL in Paragraph 65 of the Complaint are denied. To the extent the allegations in Paragraph 65 are not directed at NMCL and/or contain conclusions of law, no response is required.

66. NMCL denies the allegations in Paragraph 66 of the Complaint. Plaintiffs fail to plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 66 are not directed at NMCL and/or contain conclusions of law to which no response is required.

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<sup>2</sup> The Complaint restarts at Paragraph 60 after Paragraph 62. NMCL has numbered its Answer to correspond to the numbering in the Complaint.

63. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations.<sup>3</sup>

64. The allegations directed at NMCL in Paragraph 64 of the Complaint are denied. To the extent the allegations in Paragraph 64 are not directed at NMCL and/or contain conclusions of law, no response is required.

65. The allegations directed at NMCL in Paragraph 65 of the Complaint are denied. To the extent the allegations in Paragraph 65 are not directed at NMCL and/or contain conclusions of law, no response is required.

66. The allegations directed at NMCL in Paragraph 66 of the Complaint are denied. To the extent the allegations in Paragraph 66 are not directed at NMCL and/or contain conclusions of law, no response is required.

67. The allegations directed at NMCL in Paragraph 67 of the Complaint are denied. To the extent the allegations in Paragraph 67 are not directed at NMCL and/or contain conclusions of law, no response is required.

68. The allegations directed at NMCL in Paragraph 68 of the Complaint are denied. To the extent the allegations in Paragraph 68 are not directed at NMCL and/or contain conclusions of law, no response is required.

69. NMCL denies the allegations in Paragraph 69 of the Complaint. Plaintiffs fail to plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 69 are not directed at NMCL and/or contain conclusions of law to which no response is required.

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<sup>3</sup> The Complaint restarts at Paragraph 63 after Paragraph 66. NMCL has numbered its Answer to correspond to the numbering in the Complaint.

70. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations.

71. The allegations directed at NMCL in Paragraph 71 of the Complaint are denied. To the extent the allegations in Paragraph 71 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

72. The allegations directed at NMCL in Paragraph 72 of the Complaint are denied. To the extent the allegations in Paragraph 72 are not directed at NMCL and/or contain conclusions of law, no response is required.

73. The allegations directed at NMCL in Paragraph 73 of the Complaint are denied. To the extent the allegations in Paragraph 73 are not directed at NMCL and/or contain conclusions of law, no response is required.

74. The allegations directed at NMCL in Paragraph 74 of the Complaint are denied. To the extent the allegations in Paragraph 74 are not directed at NMCL and/or contain conclusions of law, no response is required.

75. The allegations directed at NMCL in Paragraph 75 of the Complaint are denied. To the extent the allegations in Paragraph 75 are not directed at NMCL and/or contain conclusions of law, no response is required.

76. The allegations directed at NMCL in Paragraph 76 of the Complaint are denied. To the extent the allegations in Paragraph 76 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation

of their contents.

77. The allegations directed at NMCL in Paragraph 77 of the Complaint are denied. To the extent the allegations in Paragraph 77 are not directed at NMCL and/or contain conclusions of law, no response is required.

78. The allegations directed at NMCL in Paragraph 78 of the Complaint are denied. To the extent the allegations in Paragraph 78 are not directed at NMCL and/or contain conclusions of law, no response is required.

79. The allegations directed at NMCL in Paragraph 79 of the Complaint are denied. To the extent the allegations in Paragraph 79 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

80. The allegations directed at NMCL in Paragraph 80 of the Complaint are denied. To the extent the allegations in Paragraph 80 are not directed at NMCL and/or contain conclusions of law, no response is required.

81. NMCL denies the allegations in Paragraph 81 of the Complaint. Plaintiffs fail to plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 81 are not directed at NMCL and/or contain conclusions of law to which no response is required.

82. The allegations directed at NMCL in Paragraph 82 of the Complaint are denied. To

the extent the allegations in Paragraph 82 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute and certain cases, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

83. The allegations directed at NMCL in Paragraph 83 of the Complaint are denied. To the extent the allegations in Paragraph 83 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a United Nations Resolution and certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

84. The allegations directed at NMCL in Paragraph 84 of the Complaint are denied. To the extent the allegations in Paragraph 84 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

85. The allegations directed at NMCL in Paragraph 85 of the Complaint are denied. To the extent the allegations in Paragraph 85 are not directed at NMCL and/or contain conclusions of law, no response is required.

86. The allegations directed at NMCL in Paragraph 86 of the Complaint are denied. To the extent the allegations in Paragraph 86 are not directed at NMCL and/or contain conclusions of law, no response is required.

87. The allegations directed at NMCL in Paragraph 87 of the Complaint are denied. To the extent the allegations in Paragraph 87 are not directed at NMCL and/or contain conclusions of law, no response is required.

88. The allegations directed at NMCL in Paragraph 88 of the Complaint are denied. To the extent the allegations in Paragraph 88 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute and case, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

89. The allegations directed at NMCL in Paragraph 89 of the Complaint are denied. To the extent the allegations in Paragraph 89 are not directed at NMCL and/or contain conclusions of law, no response is required.

90. The allegations directed at NMCL in Paragraph 90 of the Complaint are denied. To the extent the allegations in Paragraph 90 are not directed at NMCL and/or contain conclusions of law, no response is required.

91. The allegations directed at NMCL in Paragraph 91 of the Complaint are denied. To the extent the allegations in Paragraph 91 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute and case, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

92. The allegations directed at NMCL in Paragraph 92 of the Complaint are denied. To the extent the allegations in Paragraph 92 are not directed at NMCL and/or contain conclusions of

law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

93. The allegations directed at NMCL in Paragraph 93 of the Complaint are denied. To the extent the allegations in Paragraph 93 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

94. The allegations directed at NMCL in Paragraph 94 of the Complaint are denied. To the extent the allegations in Paragraph 94 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete and accurate recitation of their contents.

95. The allegations directed at NMCL in Paragraph 95 of the Complaint are denied. To the extent the allegations in Paragraph 95 are not directed at NMCL and/or contain conclusions of law, no response is required.

96. The allegations directed at NMCL in Paragraph 96 of the Complaint are denied. To the extent the allegations in Paragraph 96 are not directed at NMCL and/or contain conclusions of law, no response is required.

97. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations.

98. The allegations directed at NMCL in Paragraph 98 of the Complaint are denied. To the extent the allegations in Paragraph 98 are not directed at NMCL and/or contain conclusions of law, no response is required.

99. The allegations directed at NMCL in Paragraph 99 of the Complaint are denied. To the extent the allegations in Paragraph 99 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

100. The allegations directed at NMCL in Paragraph 100 of the Complaint are denied. To the extent the allegations in Paragraph 100 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

101. The allegations directed at NMCL in Paragraph 101 of the Complaint are denied. To the extent the allegations in Paragraph 101 are not directed at NMCL and/or contain conclusions of law, no response is required.

102. The allegations directed at NMCL in Paragraph 102 of the Complaint are denied. To the extent the allegations in Paragraph 102 are not directed at NMCL and/or contain conclusions of law, no response is required.

103. The allegations directed at NMCL in Paragraph 103 of the Complaint are denied. To the extent the allegations in Paragraph 103 are not directed at NMCL and/or contain conclusions of law, no response is required.

104. NMCL denies the allegations in Paragraph 104 of the Complaint. Plaintiffs fail to plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 104 are not directed at NMCL and/or contain conclusions of law to which no response is required.

105. NMCL incorporates by reference the foregoing responses to Plaintiffs' allegations.

106. The allegations directed at NMCL in Paragraph 106 of the Complaint are denied. To the extent the allegations in Paragraph 106 are not directed at NMCL and/or contain conclusions of law, no response is required.

107. The allegations directed at NMCL in Paragraph 107 of the Complaint are denied. To the extent the allegations in Paragraph 107 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

108. The allegations directed at NMCL in Paragraph 108 of the Complaint are denied. To the extent the allegations in Paragraph 108 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

109. The allegations directed at NMCL in Paragraph 109 of the Complaint are denied. To the extent the allegations in Paragraph 109 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

110. The allegations directed at NMCL in Paragraph 110 of the Complaint are denied. To the extent the allegations in Paragraph 110 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

111. The allegations directed at NMCL in Paragraph 111 of the Complaint are denied. To the extent the allegations in Paragraph 111 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

112. The allegations directed at NMCL in Paragraph 112 of the Complaint are denied. To the extent the allegations in Paragraph 112 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on certain statutes, such documents speak for themselves, all objections are hereby reserved, such allegations are denied, and NMCL refers to those documents for a complete

and accurate recitation of their contents.

113. The allegations directed at NMCL in Paragraph 113 of the Complaint are denied.

To the extent the allegations in Paragraph 113 are not directed at NMCL and/or contain conclusions of law, no response is required.

114. The allegations directed at NMCL in Paragraph 114 of the Complaint are denied.

To the extent the allegations in Paragraph 114 are not directed at NMCL and/or contain conclusions of law, no response is required. To the extent that Plaintiffs purport to quote from, paraphrase, or rely on a statute, such document speaks for itself, all objections are hereby reserved, such allegations are denied, and NMCL refers to the document for a complete and accurate recitation of its contents.

115. The allegations directed at NMCL in Paragraph 115 of the Complaint are denied.

To the extent the allegations in Paragraph 115 are not directed at NMCL and/or contain conclusions of law, no response is required.

116. The allegations directed at NMCL in Paragraph 116 of the Complaint are denied.

To the extent the allegations in Paragraph 116 are not directed at NMCL and/or contain conclusions of law, no response is required.

117. NMCL denies the allegations in Paragraph 117 of the Complaint. Plaintiffs fail to plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 117 are not directed at NMCL and/or contain conclusions of law to which no response is required.

118. NMCL denies the allegations in Paragraph 118 of the Complaint. Plaintiffs fail to

plead a specific basis for recovery of punitive damages, and pursuant to the Court's March 30, 2023 Order, Plaintiffs' punitive damage claims will be dismissed with prejudice. Therefore, NMCL is not required to respond to the allegations set forth in this paragraph. In addition and in the alternative, the allegations in Paragraph 118 are not directed at NMCL and/or contain conclusions of law to which no response is required.

## **II. AFFIRMATIVE DEFENSES**

Without admitting liability as to any of Plaintiffs' causes of action, and without assuming the burden of proof on any claims, defenses, or factual issues that would otherwise rest with the Plaintiffs, NMCL affirmatively asserts the following defenses:

1. Plaintiffs and the members of the putative class, or some of them, lack standing, in whole or in part, to assert the claims and putative claims against NMCL set forth in the Complaint.
2. This action cannot or should not be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution.
3. Plaintiffs fail to state a claim for punitive damages as a matter of law.
4. Plaintiffs fail to plead a specific basis for recovery of punitive damages for each cause of action asserted in the Complaint.
5. Plaintiffs fail, in whole or in part, to state a claim against NMCL upon which relief can be granted for, *inter alia*, the reasons set forth in NMCL's previously-filed motions to dismiss and supporting briefs.
6. Without admitting the allegations of the Complaint, Plaintiffs' Complaint and each cause of action therein are barred in that the alleged practices are not unfair, the public is not likely to be deceived by any alleged practices, NMCL gained no competitive advantage by such practices, and/or the benefits of the alleged practices outweigh any harm or other impact they may cause.

7. The Complaint fails to plead fraud with particularity as required by Federal Rule of Civil Procedure 9(b).

8. Plaintiffs are barred from recovery, in whole or in part, because Plaintiffs and/or the members of the putative class, or some of them, suffered no injuries or damages as a result of any matters referred to in the Complaint.

9. Plaintiffs have suffered no injury or damage that was materially aided, substantially assisted, or proximately caused by any acts or omissions of NMCL. Any injuries, losses, or damages suffered by the Plaintiffs were the result of the acts or omissions of third parties or the Plaintiffs themselves, market conditions, or other independent forces over which NMCL had no control and for which it cannot be held liable.

10. Plaintiffs' claims are barred, in whole or in part, by the terms and conditions set forth on NMCL's website including, but not limited to, the limitation of liability, indemnification, participation disclaimer, third-party links, warranty limitations and exclusions, and the policy regarding sales of Berkey products to residents of California and Iowa. The claims of some or all of the Plaintiffs and/or members of the putative class are additionally barred, in whole or in part, by the terms and conditions of authorized dealers from whom they purchased Berkey products.

11. Plaintiffs' claims are barred, in whole or in part, by applicable statutes of limitations or repose and/or the equitable doctrine of laches.

12. NMCL did not make any misstatements or omissions of material fact, and did not materially aid, provide substantial assistance to, or knowingly participate in any fraudulent activity that proximately caused injury to Plaintiffs. NMCL's conduct was not fraudulent and was not likely to mislead or deceive consumers and/or the public.

13. Plaintiffs and the members of the putative class, or some of them, did not

reasonably or justifiably rely on any material misstatements or omissions allegedly made by NMCL.

14. NMCL's alleged misstatements and/or omissions did not proximately cause or contribute to the losses or damages, if any, suffered by Plaintiffs or the members of the putative class.

15. NMCL owed no legal duties to the Plaintiffs and/or the members of the putative class, or some of them.

16. Plaintiffs' damage claim is, in whole or in part, too speculative to permit recovery.

17. Plaintiffs and/or the members of the putative class, or some of them, did not exercise due care and diligence and/or did not act reasonably to protect themselves from, or to mitigate, their losses or damages.

18. Plaintiffs' claims, in whole or part, are barred under the doctrines of estoppel, waiver, ratification, comparative or contributory fault, and/or other related doctrines or principles.

19. The Complaint, and each cause of action therein, is barred to the extent that the conduct complained of is protected by the free speech provisions of the Constitution of the United States of America.

20. An award of monetary relief, other than restitution, to Plaintiffs under California Business & Professions Code Sections 17200 and 17500, including but not limited to penalties of any type, would violate the due process provision of the Constitution of the United States of America.

21. Each cause of action is barred, in whole or in part, because NMCL acted in good faith at all times.

22. Plaintiffs' claims based on alleged willful misrepresentations are barred because

the representations and actions alleged were not intended to mislead or deceive consumers and were not made or done with knowledge that they were allegedly false.

23. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs, the members of the putative class, or some of them, lacked knowledge of, awareness of, or exposure to some or all of the alleged misrepresentations by NMCL described in the Complaint, and/or relied, in whole or in part, on different or additional statements or representations made by or on behalf of other persons or entities, and/or purchased Berkey products for different or additional reasons unrelated to the alleged misrepresentations by NMCL.

24. Plaintiffs' claims are barred to the extent Plaintiffs would be unjustly enriched if allowed to recover any monies claimed to be due in the Complaint.

25. Plaintiffs' claims are expressly and impliedly preempted by federal law, including but not limited to, the Food, Drug and Cosmetic Act, the Nutrition Labeling and Education Act of 1990, the Safe Drinking Water Act, and the Federal Drug Administration's and Environmental Protection Agency's regulations.

26. Plaintiffs' claims are barred, in whole or in part, because there was no privity of contract between NMCL and Plaintiffs and/or the members of the putative class.

27. Without admitting the allegations of the Complaint, Plaintiffs' claim of unjust enrichment is barred to the extent there exists an enforceable contract between NMCL and Plaintiffs and/or the members of the putative class.

28. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs and/or members of the putative class, or some of them, failed to provide proper pre-suit notice of claims to NMCL.

29. Plaintiffs and the members of the putative class, or some of them, may have purchased unauthorized or counterfeit products for which NMCL cannot be held liable.

30. Plaintiffs fail to particularly plead which common law and which statutory claims they assert under which state laws on behalf of themselves and the putative class, and each cause of action that Plaintiffs assert, or may assert, is barred, in whole or in part, based on the affirmative defenses available for each relevant cause of action under each relevant state law.

31. NMCL reserves the right to assert additional affirmative defenses after additional factual investigation and discovery.

Dated: May 18, 2023

Respectfully Submitted,

/s/ Ronald W. Breaux  
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*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2023, the foregoing document was served on all counsel of record via the Court's electronic filing system.

/s/ Ronald W. Breaux  
Ronald W. Breaux